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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~325~~ 18

H. B. TITUS, INFORMER, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES, DEFENDANTS IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

FILED JANUARY 20, 1872.

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1 UNITED STATES OF AMERICA,
Southern District of Georgia:

In the district court of the United States for the southern district of Georgia.

THE UNITED STATES
vs.
ONE HUNDRED AND EIGHTEEN $\frac{38}{100}$ ACRES OF land, Macon, Ga.
} Information. Confiscation.

Be it remembered that on the fifteenth day of January in the year of our Lord one thousand eight hundred and sixty-seven, Henry S. Fitch, the United States attorney for the southern district of Georgia, filed his information in the district court of the United States for the southern district of Georgia, against a certain lot of ground, consisting of one hundred and eighteen $\frac{38}{100}$ acres, (118 $\frac{38}{100}$,) more or less, situate in the county of Bibb, State of Georgia, and district aforesaid, and lying and being in the thirteenth (13th) district, &c., in a cause for confiscation, under the act of Congress, and which information was in the words and figures as follows, to wit:

Information.

UNITED STATES OF AMERICA,
2 *Southern District of Georgia:*

United States district court for the southern district of Georgia, February term, 1867, A. D.

To the honorable the judge of the district court of the United States for the southern district of Georgia:

Henry S. Fitch, attorney of the United States for the district aforesaid, who prosecutes for the United States, and an informant, exhibits this his information against a certain lot or parcel of land, consisting of one hundred and eighteen $\frac{38}{100}$ acres, (118 $\frac{38}{100}$) more or less, situate in the county of Bibb, State of Georgia, and district aforesaid, and lying and being in the thirteenth (13th) district, and also in the Macon reserve, and commencing at a point fifty feet from the Macon and Western Railroad, about two miles from Macon and near the old steam-mill, which is marked on the spot by a stake placed by A. Schwab, the surveyor, and shown on the annexed map by the letter A, and which piece of land contains one hundred and eighteen and $\frac{38}{100}$ acres, and which is more fully and particularly shown by the annexed map or diagram within the lines marked A, B, C, D, E, F, G, H, I, J, & K, except four acres con-
3 tained in the lines marked A, B, C, & D, and which was bought by said confederate government at sheriff's sale, the same being seized and now in the custody of the marshal of the said district under an order of seizure issued by the said attorney of the United States on the * day of , 186 , and against all persons lawfully intervening for their interests therein.

And thereupon the said attorney allege,' articulately propound, and give' the judge to understand:

First. That heretofore, that is to say, in and during the year' of our Lord 1861, 1862, 1863, 1865, and until the day of , in the year one

one thousand eight hundred and sixty-five, an insurrection or rebellion existed in certain States of the United States, against the laws and authority of the United States, composed of the States of North Carolina, Florida, Georgia, Texas, Mississippi, Alabama, Arkansas, Louisiana, and part of Virginia, which said States were organized under the name and style of the Confederate States of America, and were engaged in carrying on an insurrection or rebellion against the Government of the United States, to dissolve the Union thereof, and to establish within the said United States another government hostile thereto, and of the
4 name and style aforesaid.

Second. That heretofore, that is to say, in and during the years aforesaid, and in the year one thousand eight hundred and sixty-one, and during the existence insurrection and rebellion aforesaid, and for the purpose of suppressing the same, the Congress of the United States of America passed an act entitled "An act to confiscate property used for insurrectionary purposes," approved August 6th, 1861, providing, among other things, that after the President of the United States shall have declared by proclamation that the laws of the United States are opposed and the execution thereof obstructed by combinations too powerful to be suppressed by ordinary course of judicial proceedings, or by virtue of the power vested in the United States marshal by law; that property used in the manner and with the interest specified in said act is declared lawful subject of prize and capture wherever found; and it shall be the duty of the President of the United States to cause the same to be seized, confiscated, and condemned as forfeited to the United States.

Third. That heretofore, that is to say, in and during the years aforesaid, and after the passage of the act aforesaid and the publication by the President of the United States of the proclamation, aforesaid and mentioned in said act, Alexander S. Atkinson and Thomas M. Kilpatrick, and D. M. Dunwoody, as executors of the Hon. Charles J. McDonald, dec'd, residents of the district aforesaid, and of the county of , by authority given them in his will, of record in the ordinary court of the county of Cobb, State of Georgia aforesaid, being the executors of the late owner of the parcel of land hereinbefore described as seized and in the custody of the United States marshal aforesaid, not regarding said act of Congress nor the President's proclamation issued in pursuant thereof, did grant, bargain, sell, and convey the said parcel of land for and in consideration of the sum of eight thousand sixty-six $\frac{60}{100}$ dollars ($8,066.60,) through their (executor's) agent I. C. Plant, to the so-called Confederate States government, then and there engaged in carrying on an insurrection or rebellion against the laws and authority of the United States aforesaid, they, the said Alexander S. Atkinson, Thomas M. Kilpatrick, and D. M. Dunwoody, executors for the late Charles J. McDonald, then and there selling, conveying, and
6 granting said parcel of land to the said so-called Confederate States government, knowingly, with intent that the same might be used and employed by others, and consenting to the use and employment by others of said property in aiding and abetting and promoting said insurrection or rebellion against the laws and authority of the United States aforesaid.

Fourth. That heretofore, that is to say, in and during the years aforesaid, in the district aforesaid, after the passage of the act aforesaid, and after the publication of the proclamation by the President of the United States, mentioned in said act, the said Alexander S. Atkinson, Thomas M. Kilpatrick, and D. M. Dunwoody, executors, for Charles J. McDonald, dec'd, by their deed in writing, dated on the second day of

December, eighteen hundred and sixty-two (1862,) through their agent and attorney, I. C. Plant, and recorded in the clerk's office of the superior court of Bibb County, State of Georgia, on the 23rd day of July, , bargained, sold, conveyed, and granted the aforesaid parcel of land, together with the improvements thereon, to the so-called Confederate States government, then and there engaged in an insurrection or rebellion aforesaid against the laws and authority of
7 the United States, they the said Alexander S. Atkinson, Thomas M. Kilpatrick, and D. M. Dunwoody, executors, through their agent and attorney, I. C. Plant, for the Charles J. McDonald, dec'd, knowingly executing the said conveyance with intent to aid, abet, and promote said insurrection or rebellion, or to suffer said property so conveyed to be used and employed by others in aiding, abetting, and promoting said insurrection and rebellion.

Fifth. That heretofore, that is to say in and during the years aforesaid, during the existing of the rebellion aforesaid, in the district aforesaid, after the passage of the act aforesaid, and after the publication of the President's of the United States proclamation aforesaid, the said above-described property or parcel of land, together with the improvements thereon, was sold, or subscribed, or given by the said executors for Charles J. McDonald, dec'd, Alexander S. Atkinson, Thomas M. Kilpatrick, and D. M. Dunwoody, through their agent and attorney, I. C. Plant, knowingly, with intent to use or employ, or suffer the same to be used or employed in aiding, abetting, and promoting said rebellion or insurrection; and the name of said agent or officer of the so-
8 called Confederate States government is to the attorney unknown.

Sixth. That heretofore, that is to say in and during the years aforesaid, and during the insurrection and rebellion aforesaid, in the district aforesaid, after the passage of the act aforesaid, and after the publication of the proclamation of the President of the United States aforesaid, and after the passage of a certain other act of Congress entitled "An act to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes," approved July 17th, 1862, wherein it is provided among other things that "any person engaged in armed rebellion against the United States, and did not cease to aid, countenance, and abet such rebellion, within (60) sixty days after public warning by the President of the United States, all the estate and property, minus stocks, credits, and effects of such person, shall be liable to seizure, condemnation, and sale;" that the said agent, I. C. Plant, for the executors Alexander S. Atkinson, Thomas M. Kilpatrick, and D. M. Dunwoody, for the late Charles J. McDonald, dec'd, did not within sixty days after the publication of said proc-
9 lamation in said last act of Congress mentioned, cease to aid, countenance, and abet said rebellion and return to their allegiance to the United States, in this, that the said I. C. Plant, agent and attorney for the executors, Alexander S. Atkinson, Thomas M. Kilpatrick, and D. M. Dunwoody, for the late Charles J. McDonald, dec'd, sold, subscribed, or gave the said parcel of land, with the improvements thereon, hereinbefore described, with the intent and purposes aforesaid, to the said so-called government of the Confederate States, for rebellious purposes, whereby, and by force of such acts of Congress and said proclamation, the property of the said I. C. Plant, agent and attorney for the executors, Alexander S. Atkinson, Thomas M. Kilpatrick, and D. M. Dunwoody, for the estate of Charles J. McDonald, dec'd, became and is liable to seizure, condemnation, and sale, as forfeited to the United States.

Seventh. That heretofore, that is to say on or about the day of , in the year one thousand eight hundred and sixty-five, the rebel army, under the command of Joseph E. Johnston, major-general in the army of the so-called Confederate States of America, capitulated and surrendered to Major-General W. T. Sherman, commanding
9½ the United States forces, at North Carolina, the district aforesaid being included in the pretended and assumed command of the said Johns'on, and among other conditions of capitulation and surrender, it was agreed and stipulated that——

Whereupon, and by virtue of said conditions of capitulation and surrender, and by force of the acts of Congress aforesaid and the proclamation aforesaid, the property of the said I. C. Plant, agent and attorney for the executors, Alexander S. Atkinson, Thomas M. Kilpatrick, and D. M. Dunwoody, for the estate of Charles J. McDonald, dec'd, and more especially the parcel of land and improvements thereon heretofore described and informed against, became the property of the United States; that said property is of great value, to wit, of the value of thousand dollars.

The said attorney of the United States, in the name and behalf of the said United States, says that all and singular the premises are true.

Wherefore he prays that process may issue in due form of law out of said court, directed to the marshal thereof, commanding him to
10 summon all claimants to said property to be and appear at the next term of court to answer this libel of information and show cause why said property should not be decreed as liable to forfeiture to the United States, and that judgment should not be rendered against the parcel of land and improvements thereon, for the value thereof, in lawful money of the United States, and for such further relief as the United States may be entitled to in the premises.

HENRY S. FITCH,
U. S. Att'y for Georgia.

(Endorsed:) Filed January 15, 1867.
(Signed) H. C. HOLCOMBE, *Clerk.*

And with said information, the said district attorney filed, in the office of the clerk of said court, a copy of the deed from the said Atkinson, Dunwoody, and Kilpatrick, to the so-called Confederate States, in words and figures as follows, to wit:

Copy deed.

Deed from Atkinson, Dunwoody, and Thomas M. Kirkpatrick, executors, &c., of the lot of land whereon the C. S. laboratory now stands, in Macon, to C. S. of A. 118.38 acres.

STATE OF GEORGIA, *Bibb County:*

This indenture, made the second day of December, in the year of our Lord one thousand eight hundred and sixty-two, and in the second
11 year of the independence of the Confederate States of America, between Alexander S. Atkinson, D. M. Dunwoody, and Thomas M. Kirkpatrick, as executors of the Hon. Charles J. McDonald, dec'd, and by authority as in his will, of record in the ordinary court of the county of Cobb, of the one part, and the Confederate States of America, of the county of , of the other part, witnesseth that the said Atkinson,

Dunwoody, and Kirkpatrick, executors as aforesaid, for and in consideration of the sum of eight thousand and sixty-six ($\frac{66}{100}$) dollars (8,066.60) in hand paid at and before the sealing and delivery of these presents, the receipts whereof is hereby acknowledged, hath granted, bargained, and sold, aliened, conveyed, and confirmed, and by these presents doth grant, bargain, sell, alien, and convey unto the said Confederate States of America, their successors and assigns, all that lot or parcel of land situate, lying, and being in Bibb County, and in the thirteenth (13th) district, and also in the Macon reserve, and commencing at a point fifty feet from the Macon and Western Railroad, about two miles from Macon, and near the old steam saw-mill, which is marked on the spot
by a stake placed by A. Schwaab, the surveyor, and shown on
12 the annexed map, by the letter "A," and which piece of land, containing one hundred and eighteen acres and $\frac{38}{100}$, (118.$\frac{38}{100}$,) and which is more fully and particularly shown by the annexed map or diagram within the lines marked A, B, C, D, E, F, G, H, I, & K, except four acres contained in the lines marked A, B, C, and D, and which was bought by said confederate government this day at sheriff's sale; the 118 $\frac{38}{100}$ acres, sold by said executor, being sold at the price of seventy ($70) dollars per acre, from which is deducted the sum of two hundred and twenty ($220) dollars, which said confederate government had this day to pay over and above seventy ($70) dollars per acre in order to effect the purchase of the twelve acres at sheriff's sale, in terms of the agreement made between Captain Mallett, agent for the government, and I. C. Plant, agent for said executors; to have and to hold the said premises as above described, with all and singular the rights, members, and appurtenances thereto appertaining, to the only proper use, benefit, and behoof of them, the said Confederate States of America, their successors and assigns, in fee-simple; and the said executors hereinabove set forth, the said bargained premises, as above described,
13 unto the said Confederate States, their successors and assigns, against the said executors and said Charles J. McDonald, their heirs, executors, and administrators, and against all and every other person or persons, shall and will warrant and forever defend by virtue of these presents.

In witness whereof the said executors, by their agent and attorney in fact, hath hereunto set their hands, affixed their seals, and delivered these presents, this day and year first above written.

ALEXANDER S. ATKINSON. [SEAL.]
DEAN M. DUNWOODY. [SEAL.]
THOMAS M. KIRKPATRICK. [L. S.]
I. C. PLANT, [L. S.]
Agent and Att'y in fact.

Signed, sealed, and delivered in the presence of—
R. W. CUBBEDGE.
L. N. WHITTLE,
Notary Public.

GEORGIA, *Bibb County:*

CLERK'S OFFICE, SUPERIOR COURT, *July* 23, 1866.

I, Albert B. Ross, clerk of said court, hereby certify that the foregoing is a true copy of an original deed as taken from the records of my office.

Given under my hand and seal of office.

[L. S.] A. B. ROSS, *Clerk.*

[5 cent. U. S. rev. stamp cancelled.]

And afterwards, to wit, on the said fifteenth day of January,
14 in the year of our Lord one thousand eight hundred and sixty-seven, a warrant of seizure was issued out of the said court, in words and figures as follows, to wit:

Warrant of seizure.

The President of the United States of America to the marshal of the district of Georgia, greeting:

Whereas an information has been filed in the district court of the United States for the southern district of Georgia, on the day of January, in the year 1867, by Henry S. Fitch, esq., attorney of the United States for said district, in behalf of the United States of America, against one hundred and eighteen and $\frac{38}{100}$ ($118\frac{38}{100}$) acres of land, with the improvements thereon, situate, lying, and being in Bibb County, Georgia, and in the thirteenth (13th) district, and also in the Macon reserve, and being the same as was heretofore deeded by the executors of Charles J. McDonald to the so-called Confederate States, for reasons and causes in said information mentioned, and praying the usual process and monition of the court in that behalf to be made, and that all persons interested in said property may be cited in general and special to answer the premises, and all due proceedings been had,
15 that the said property mentioned be condemned, and the proceeds thereof distributed according to law: You are therefore hereby commanded to attach the said property, and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned as forfeited, and the proceeds thereof distributed according to the prayer of said information, and that they be and appear before the said court, to be held in and for said district, on the second Tuesday of February next, at 10 o'clock in the forenoon of that day, if the same should be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same and make these allegations in that behalf. And what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness the Hon. John Erskine, judge of the said court, in the southern district of Georgia, the fifteenth day of January, in the year of our Lord one thousand eight hundred and sixty-seven, and of our independence the eighty-ninth year.

[L. S.] H. C. HOLCOMBE, *Clerk.*

16 And afterwards, to wit, on the 24th day of January, A. D. 1867, the said warrant of seizure was returned, and filed in the office of the clerk of said court, endorsed in words and figures as follows, to wit:

Marshal's return.

U. S. MARSHAL'S OFFICE,
Savannah, January 20, 1867.

In obedience to the within warrant I seized the within-described property January 17, 1867. The return of—

JAMES COX,
Deputy U. S. Marshal.

And afterwards the said marshal amended his return, in words and figures as follows, to wit:

Marshal's amended return.

In obedience to the within warrant, I have given due public notice to all persons interested in the within-described property, and have the same in my custody, this 12th day of February, 1867. The return of—

W. G. DICKSON,
U. S. Marshal.

And, afterwards, to wit, on the 26th day of February, A. D. 1867, the said cause came on to be heard; whereupon the following proceedings were had, to wit:

Order for default.

UNITED STATES OF AMERICA
vs.
17 LOT OR PARCEL OF LAND IN THIRTEENTH (13th) district, &c., Bibb County, State of Georgia. } Information. Confiscation.

On motion of Henry S. Fitch, attorney for the United States, the marshal was ordered to make proclamation in open court, requiring all persons concerned or having any right, title, interest, claim, or demand in or to the said lot or parcel of land in thirteenth (13th) district, and also in the Macon reserve, Bibb County, State of Georgia, more particularly described in information on file in this court, now to come forward and file their respective claims thereto, if any they have; and no person or persons appearing for that purpose, on motion it was ordered that the default of all persons be, and the same is hereby, entered on the minutes. Judgment *d* by default.

Feb'ry 26th, 1867.

JOHN ERSKINE,
U. S. Judge.

Thereupon, to try the said cause, a jury being called, came, to wit, L. J. B. Fairchild, foreman, John W. Wells, Edward Morgan, Henry Ritter, R. H. Tatem, J. F. Brown, William Bryn, Frank Godwin, J. Surtevant, C. V. Hutchins, J. M. Henderson, and J. D. Boggs, who being empannelled, and sworn the truth to speak upon said cause, and
18 verdict render according to law and the evidence, upon their oaths do find and say as follows, to wit:

Verdict.

We, the jury, each and all, find the within-described property subject to forfeiture and condemnation.

L. J. B. FAIRCHILD,
Foreman.

SAVANNAH, GA., *Feb'y* 26, 1867.

Whereupon the court ordered and adjudged a decree of condemnation in words and figures, as follows, to wit:

UNITED STATES OF AMERICA
vs.
ONE HUNDRED & EIGHTEEN $\frac{38}{100}$ ACRES, ($118\frac{38}{100}$) more or less, Bibb County, State of Georgia. } Information.

Decree of condemnation.

And, now, on the twenty-sixth day of February, in the year of our Lord one thousand eight hundred and sixty-seven, proclamation being

made, in open court, that if any person can ought say why a certain lot or parcel of land, consisting of one hundred and eighteen $\frac{38}{100}$ acres, ($118\frac{38}{100}$,) more or less, in the county of Bibb, and State of Georgia, and district aforesaid, and lying and being in the thirteenth (13th) district, also in the Macon reserve, and commencing at a point
19 fifty feet from the Macon and Western Railroad, about two miles from Macon, which is marked on the spot by a stake placed by A. Schwaab, the surveyor, and more particularly described in a deed of conveyance, executed by Alexander S. Atkinson, D. M. Dunwoody, and Thomas M. Kirkpatrick, executors of Charles J. McDonald, dec'd, to the so-called Confederate States of America, dated the second day of December, in the year eighteen hundred and sixty-two, should not be condemned as forfeited to the United States of America, they may come forth, and shall be heard. And because no person appeared or offered to claim the said property, or show cause why the same should not be condemned, and the jurors of the jury, selected and sworn to try the said cause, having heard the allegations and proof of the plaintiff, and have returned a verdict that "We, the jury, each and all, find the within-described property subject to forfeiture and condemnation," it is considered, ordered, and adjudged, pronounced, and decreed by the court here that the said property above described be, and the same is hereby, condemned as forfeited to the United States of America.

20 And it is further ordered that the said property be sold by the marshal of the United States, to the highest bidder, at public auction, at the court-house in the city of Macon, County of Bibb, and State of Georgia, he giving thirty days' notice of the time and place of said sale, in two newspapers published in said city, and in the Savannah Republican, a newspaper of the city of Savannah; and that the proceeds of such sale be paid by him to the recorder of this court, to be disposed of according to law.

And afterwards, to wit, on the 25th day of March, A. D. 1867, a venditioni exponas or warrant for sale issued out of this court under the seal thereof, in words and figures as follows, to wit:

Venditioni exponas.

SOUTHERN DISTRICT OF GEORGIA, *ss:*

The President of the United States of America to the marshal of the district of Georgia, greeting:

{ L. S. OF THE COURT. } Whereas an information has been filed in the district court of the United States for the southern district of Georgia, on the fifteenth day of January, in the year of our Lord one thousand eight hundred and sixty-seven, by Henry S.
21 Fitch, esquire, attorney of the United States for the said district, on behalf of the United States of America, against a certain lot of land, containing one hundred and eighteen $\frac{38}{100}$ acres, more or less, situate in the county of Bibb, and State of Georgia, lying and being in the 13th district, and also in the Macon reserve, commencing at a point fifty feet from the Macon and Western Railroad, about two miles from Macon, which is marked on the spot by a stake placed by A. Schaab, the surveyor, and more particularly described in a deed of conveyance, executed by Alexander S. Atkinson, D. Dunwoody, and Thomas M. Kirkpatrick, executors of Charles J. McDonald, dec'd, to the so-called Con-

federate States of America, dated the second day of December, in the year eighteen hundred and sixty-two, and praying that the same may be condemned as forfeited, and the proceeds thereof distributed according to law. And whereas the said lot of land has been attached by the process issued out of the said district court, in pursuance of the
22 prayer of the said information, and is now in custody by virtue thereof, and such proceedings have been thereupon had, that, by the final sentence and decree of the said court in this cause, made and pronounced on the twenty-sixth day of February, eighteen hundred and sixty-seven, the said lot of land was condemned as forfeited, and ordered to be sold by you, the said marshal, to the highest bidder, at public auction, at the court-house in the city of Macon, county of Bibb, and State of Georgia, after giving thirty days' notice of the time and place of such sale in two newspapers, published in Macon, and the Savannah Republican, a newspaper published in Savannah; and that you then pay the same to the clerk of this court. Therefore, you, the said marshal, are commanded to cause the said lot of land to be sold at the time and place aforesaid, in the manner and form by law required; and that you have and pay the moneys arising from such sale, pursuant to the aforesaid order and decree, and have you also then and there this writ.

Witness the Hon. John Erskine, judge of the said court, at Savannah, in the southern district of Georgia, this twenty-fifth day of March, in the year of our Lord one thousand eight hundred and sixty-
23 seven.

H. C. HOLCOMBE, *Clerk.*

And afterwards, to wit, on the twenty-first day of November, A. D. 1867, the said venditioni exponas was returned to the office of the clerk of said court endorsed as follows, to wit:

Marshal's return.

MACON, GA., *May* 8, 1867.

Sale of the within-mentioned property postponed by order of H. S. Fitch, U. S. attorney, this 8th day of May, 1867.

The return of—

W. G. DICKSON,
U. S. Marshal.

And afterwards, to wit, on the 20th day of January, A. D. 1870, the said venditioni exponas having been previously handed to the marshal further proceeding and service thereon, the said marshal returned the said venditioni exponas to the office of the clerk of said court endorsed as follows, to wit:

Marshal's second return.

I certify that, on the 7th day of December, 1869, at Macon, Bibb Co., Georgia, in pursuance of the within process, and after due notice as required by law, I sold the within-mentioned $118\frac{38}{100}$ acres of land at public auction to Daniel G. Hughes, John S. Schofield, Samuel P. Salter, William R. Brown, Robert J. Lightfoot, Henry J. Lamar, L. M. & W. H. Felton, James C. McBurney, John G. Brown, Whittle & Gastin,
24 Daniel F. Gunn, and I. W. Wimberly, for the sum of nineteen

thousand five hundred and forty-two dollars and seventy-five cents, (19,542.75,) that being the highest bid therefor, and they being the highest bidders, and that I have paid the said sum into the registry of the court as I am within commanded.

Savannah, Ga., Jan'y 20, 1870.

W'M H. SMYTH,
U. S. Marshal.

And be it further remembered that, on the seventeenth day of June, in the year of our Lord one thousand eight hundred and sixty-seven, in the said district court of the United States for the southern district of Georgia, the following proceedings were had, to wit:

Petition of Titus.

The petition of H. B. Titus, informer, praying order for distribution of the process filed June 17, 1867, in words and figures as follows, to wit:

United States district court, southern district of Georgia, May term, 1867.

THE UNITED STATES
vs.
ONE HUNDRED AND EIGHTEEN & $\frac{38}{100}$ ACRES of land. } Information.

And now comes H. B. Titus, by his attorney, and says that
25 heretofore, to wit, on the 17th day of July, 1866, and before the proceedings herein were instituted, he filed with the Hon. Henry S. Fitch, United States attorney for this district, information under act of Congress of Aug. 6th, 1861, against one hundred and eighteen and $\frac{38}{100}$ acres of land, and the improvements thereon, in Bibb County, being the same described in the libel of information herein.

That the said U. S. attorney did, in pursuance of said information so filed by him, institute the proceedings herein for the condemnation of said property for the use of this petitioner, as informant, and the United States in equal parts.

That, at the last February term of this hon. court, a decree was rendered condemning said property as forfeit to the United States, and directing the same to be sold, and the proceeds to be paid to the clerk.

That the same has been advertised for sale, but has not been sold, the U. S. attorney postponing the sale of the same.

The petitioner prays to be made a party herein, and a judgment of this court asserting his right to one-half of the proceeds of said property, directing the same to be paid to him whenever said property
26 shall be sold, and for all proper relief.

JOHN T. CROXTON, *Att'y.*

And on the fourth day of November, A. D. 1867, the "petition of Hill Gowdy, informer," praying a share of the proceeds in said cause, was filed in said court in words and figures as follows, to wit:

Petition of Gowdy.

UNITED STATES OF AMERICA,
Southern District of Georgia.

In the district court of the United States for said district.

UNITED STATES *vs.* ONE HUNDRED AND EIGHTEEN AND $\frac{38}{100}$ ACRES of land in Bibb County, Georgia.	Information and decree of condemnation.

To the honorable John Erskine, district judge of the United States for said district:

The petition of Hill Gowdy, of the city of Savannah and southern district of Georgia aforesaid, respectfully sheweth:

That your petitioner heretofore, to wit, on the nineteenth day of July, in the year eighteen hundred and sixty-six, filed with Henry S. Fitch, esq., district attorney of the United States for the said district, his certain information, in writing, (a copy of which is hereunto
27 annexed,) against a certain lot or parcel of land of about one hundred and fifty acres, more or less, in Bibb County, on the Macon and Western Railroad, about two miles from Macon, upon which are located laboratories and other public works therewith connected, which parcel of land had, during the fall and winter of the year eighteen hundred and sixty-two, been purchased by the confederate government from the executors of Charles J. McDonald, J. A. & S. S. Virgin, Willis Wood, and others, and against the improvements thereon, as confiscable under the act of Congress of the United States, approved on the sixth day of August, in the year eighteen hundred and sixty-one.

And your petitioner further sheweth unto your honor that, in consequence and in pursuance of the said information, so filed by your petitioner, the said Henry S. Fitch, district attorney as aforesaid, instituted proceedings in the district court of the United States for the said district against One hundred and eighteen Acres and thirty-eight-one-hundredths of an acre of land in the thirteenth (13) district of Bibb County aforesaid, and also in the Macon reserve, about two miles from
28 Macon, which, on the second day of December, in the year eighteen hundred and sixty-two, had been sold and conveyed to the confederate government by A. S. Atkinson and others, executors of Charles J. McDonald, and praying the confiscation and condemnation of the said one hundred and eighteen acres and thirty-eight-one-hundredths of an acre of land for the use, in equal parts, of the United States and an informant; and that, at the last February term in the present year, eighteen hundred and sixty-seven, of the said district court, a decree was rendered, condemning the said one hundred and eighteen acres and thirty-eight-one-hundredths of an acre of land so proceeded against, and ordering the same to be sold, and the proceeds of the sale to be paid into the registry of the said court.

And your petitioner further sheweth that the said One hundred and eighteen acres and thirty-eight-one-hundredths of an acre of land have been exposed and offered for sale by the marshal of the United States for the said district, but, as your petitioner is informed, now withdrawn, and the sale of the same postponed.

29 And your petitioner avers that the said One hundred and eighteen acres and thirty-eight-one-hundredths of an acre of land so

proceeded against and condemned as aforesaid, constituted a portion of the lot or parcel of land of about one hundred and fifty acres, more or less, in Bibb County, informed against by your petitioner, as hereinbefore stated; that your petitioner was and is the informant intended in the said proceedings instituted as aforesaid, and that he is entitled to and claims, as informer, one-half part of the proceeds of the sale of the said land so proceeded against and condemned as aforesaid, under the provisions of the act of Congress.

Wherefore your petitioner prays that he may be admitted to intervene, and be made a party to the said suit and proceedings, as informer as aforesaid, and that his right to receive, as such informer, the one-half part of the said condemned acres of land, or of the proceeds thereof, may be recognized and established by the order and decree of this honorable court, and that your petitioner may have such further and other relief in the premises as to your honor shall seem meet and just.

HENRY WILLIAMS,
Att'y for Petitioner.

30 And to the foregoing petition was attached the following:

Copy.—Letter of information from Hill Gowdy.

SAVANNAH, *July* 19, 1866.

HENRY S. FITCH, Esq.,
U. S. District Attorney, Savannah, Geo.:

SIR: I have the honor to file information as follows: During the fall and winter of the year 1862, the so-called confederate government purchased from the executors of Charles J. McDonald, J. A. & S. S. Virgin, Willis Wood, and others, a certain lot or parcel of land, of about one hundred & fifty acres, more or less, in Bibb County, on the Macon and Western Railroad, about two miles from Macon, upon which are located and erected laboratories and other public works therewith connected.

I file this information against said land and improvements thereon as confiscable under the act of Congress approved Aug. 6th, 1861, and request that proceedings for condemnation be instituted forthwith. I claim, under the third section of said act, that such proceedings shall be for the use of the undersigned, as informer, and the United States, in equal parts. I am prepared to furnish all the proofs in this case when called upon.

Very truly, yours,

H. GOWDY.

31 And at the November term, 1870, of said court, when a hearing was had in this cause, imperfections appearing in the record, the following order was taken, in open court, on the fifteenth day of December, A. D. 1870, to wit:

Order to file copies to perfect record.

It appearing to the court that, in the above-stated case, together with a number of others of like character, there was an order taken that the same state of facts existed as regarded the original information, seizure, and proofs in this case as in the case of the United States vs. Lot No. 7, block 41, city of Macon, and that the same judgment be rendered and entered up in this case as in that, and, further, that case the United States filed a plea or answer to the petition of H. B. Titus, who claimed

to be informer, and to which a demurrer was filed; and, further, that a copy of the said answer has been established in that case; and whereas the United States desire to take a writ of error, &c., in each of said cases to the circuit court, it is, on motion of counsel for the United States, ordered that he now be allowed to file in this case, with a clerk of this court, copies of the petition of H. B. Titus, the answer
32 thereto and demurrer, now of file in the case of the U. S. vs. Lot No. 7, Block 41, city of Macon, so that the records will be complete in said case, and in order to enable the appellate court to act intellegibly upon the writ of error filed herein.

In open court, Dec. 15, 1870.

ANDREW SLOAN,
For the U. S.

Be it so.

JOHN ERSKINE,
U. S. Dist. Judge.

And thereupon the said attorney for the United States, on the day and date last aforesaid, filed the said paper, in words, to wit:

Answer of U. S. to H. B. Titus, informer.—Copy established by order of court.

The United States, by Henry S. Fitch, their attorney, come, and for answer to said petition say, that said H. B. Titus ought not to be decreed informer and entitled to one-half of the proceeds of said property, because they say that said property was conveyed to the Confederate States for the purpose specified in said information on the day of , and remained the property of said Confederate States, in their custody and control of the same, until the surrender of the armies of the said Confederate States, at which time said prop-
33 erty was taken possession of, and from that time henceforth remained in the possession, control, and custody of the military forces of the United States, and was by said military forces held and occupied, possessed and controlled, at the time said Titus gave the information as alleged in his said petition, and at the time the same was seized by the marshal, under the warrant issued under said information, and this the United States are ready to verify.

HENRY S. FITCH,
U. S. Att'y.

Order establishing plea.

It appearing to the court that the original plea filed in the cause stated has been lost, and it further appearing that the within is a copy, in substance, of said plea, it is ordered by the court that the within be established as a copy, and that it stand in lieu of the lost original.

In open court, December 15, 1870.

ANDREW SLOAN,
Ass't U. S. Att'y.

And on the 8th day of April, A. D. 1868, the demurrer to said answer was filed by the said petitioning informer, in words as follows, to wit:

Petitioning informer's demurrer.

In re. petition of H. B. Titus, informer, praying order of court, &c.

34 And now comes said petitioner, by his counsel, and for answer to the plea of the said United States, by them this day pleaded,

in answer to said petition of said petitioner, says, that nothing in said plea alleged is sufficient to debar this petitioner from the relief prayed for in said petition.

JACKSON, LAWTON & BASSINGER.

And afterwards, to wit, on the day and date last aforesaid, the order of the court was granted, in words as follows, to wit:

Order of the court.

Petition of H. B. Titus, informer, praying order of court for distribution, &c.

It appearing to the court from the pleadings, and it being admitted that the libel in the above-stated case was filed upon the information filed by the said petitioner, H. B. Titus, with the district attorney of the United States for said district, and it appearing further from the record in said cause that the seizure of said property was based upon said information, and it further appearing that the evidence upon which the judgment of condemnation of said property was based and rendered was furnished by said petitioner, after hearing argument upon
35 demurrer to the plea of the United States pleaded against the said petition, it is ordered, adjudged, and decreed that the prayer of said petitioner be granted, and that one-half of the net proceeds from the sale of the said property, after payment of all costs in said cause, be paid to said petitioner or to his attorneys of record.

APRIL 8, 1868.

JOHN ERSKINE,
U. S. Judge.

And afterwards, to wit, on the day and date last aforesaid, the following order was made in open court, to wit:

Order of court.

THE UNITED STATES *vs.* LOT NO. 7, BLOCK 41, CITY OF MACON.
SAME *vs.* 15 ACRES OF LAND.
SAME *vs.* 12 ACRES OF LAND.
SAME *vs.* 17¾ ACRES OF LAND.
SAME *vs.* 27 ACRES OF LAND.
SAME *vs.* LOTS 1, 2, 3, & 4, MACON.
SAME *vs.* 118$\frac{38}{100}$ ACRES OF LAND.

By consent of counsel, and the same state of facts existing in all these cases as regards the original information, and seizure, and proofs, it is ordered that the judgment in the first of above-entitled cases, to
36 wit, The United States vs. Lot No. 7, block 41, city of Macon, be rendered and entered up in each of the others.

AP'L 8, 1868.

JOHN ERSKINE,
U. S. Judge.

And afterwards, to wit, on the 9th day of February, A. D. 1869, a certificate of the United States district attorney was filed in the said court relating to certain cases in the United States district court, of information, &c., Titus, informant, in words & figures as follows to wit:

Certificate of the district attorney that Titus was informer, &c.

In the cases of the United States vs. 15 acres of land. Same vs. 12 acres of land. Same vs. 17¾ acres of land. Same vs. 27 acres of land. Same vs. lots 1, 2, 3, & 4, Macon. Same vs. 118 38/100 acres of land. Same vs. Lot No. 7, block 41, numbered 28, 29, 31, 32, 33, 34, 35, respectively, upon the docket of said court.

I, Henry S. Fitch, district attorney of the United States for the southern district of Georgia, do hereby certify that H. B. Titus did file with me the information which led to the seizure of the property in the foregoing cases, and did furnish evidence used in the trial of said causes for the condemnation of the same.

37 SAVANNAH, *April 8th*, 1868.

HENRY S. FITCH, *U. S. Att'y.*

And afterwards, to wit, on the 19 day of April, A. D. 1870, O. A. Lochrane, attorney for the Freedman's Bureau, and under section 12 of the act of July 16th, 1866, came, and for the benefit of the "school-fund," an order was made by the court in words as follows, to wit:

In the district U. S., so. dist. of G'a, term, 1869.

THE UNITED STATES
vs.
LOT NO. 7 IN BLOCK 41.

And now comes Maj.-Gen'l O. O. Howard, as Commissioner Bureau, &c., by his att'y, O. A. Lochrane, & presents for the consideration of the court the following facts:

The above land was held under title by deed by the late so-called Confed. States; it was seized by the U. S. marshal for Georgia, and libel of information filed in this court 25 Jan'y, 1867, and default & verdict of condemnation entered up on the minutes of this court Febr'y 25, 1867. It was sold by the marshal, W. G. Dickson, on the 8th May, 1867, for the sum of $4,400, (forty-four hundred dollars,) and the proceeds of said sale are still in his hands, subject to the order of the court.

38 By an act of Congress, 16 July, 1866, an act to continue in force, and to amend an act to establish a bureau for the relief of freedmen & refugees, and for other purposes, by the 12 sec. thereof, the right and use of said property, or the proceeds derived therefrom, was by law vested in said Commissioner.

Wherefore, and for the causes aforesaid, he moves this honorable court to order the payment of such money derived from the sale of said land or property to him, that it may be appropriated in terms & pursuance of the provisions of act of Congress.

O. A. LOCHRANE,
Att'y for Movant.

I acknowledge service of the within motion, and waive copy this July 8th, 1869.

JOHN MILLEDGE,
U. S. Dist. Att'y.

Order to pay moiety of proceeds to attorney of Freedman's Bureau.

IN RE, THE UNITED STATES
vs.
$118\frac{38}{100}$ ACRES OF LAND, 15 & 12 ACRES, NEW LABORATORY, at Macon.

Motion to distribute money in the registry of the court arising from the sale of said property.

The above property having been sold by the order of the court,
39 and the proceeds paid into the registry thereof: upon motion of O. A. Lochaane, attorney for Commissioner of Freedman's Bureau, it is ordered by the court that the register of the court pay to said Commissioner one-half of the proceeds of said sale, less the fees, costs, and expenses proportionably increased in said case.

In open court, April 19th, 1870.

AMOS T. AKERMAN,
U. S. Att'y.
O. A. LOCHRANE,
Att'y for Com'r.

Be it so.

JOHN ERSKINE,
U. S. D. Judge for Ga.

And afterwards, to wit, on the second day of May, A. D. 1870, Amos T. Akerman, United States district attorney, came and filed his motion in words & figures as follows, to wit:

Motion to set aside judgment as to informer.

THE UNITED STATES *vs.* LOT NO. 7, BLOCK 41, CITY OF MACON.
SAME *vs.* 15 ACRES OF LAND.
SAME *vs.* 12 ACRES OF LAND.
SAME *vs.* $17\frac{3}{4}$ ACRES OF LAND.
SAME *vs.* 27 ACRES OF LAND.
SAME *vs.* LOTS 1, 2, 3, & 4, MACON.
SAME *vs.* $118\frac{38}{100}$ ACRES OF LAND.

Information.

An order having been passed on the eighth day of April, in the year 1868, by the honorable the district judge then presiding in this
40 court, in the first of the cases above stated, adjudging that H. B. Titus was entitled to one-half of the net proceeds of the forfeited property, as informer, and directing that the same should be paid to him. And another order having been passed on the same day by the same judge, reciting that the same state of facts existed in all of said cases as regarded the original informations, seizure, and proof, and directing that the same judgment should be rendered in all of the others of said cases, and the same judgment having been then so entered accordingly.

And the said judgments being yet unexecuted, except as to the payment of four thousand and five dollars and sixty-three cents, part of the

proceeds of the forfeited property to said Titus on the 8th day of April, A. D. 1868, and a large sum of money, to wit, the sum of , the proceeds of the sale of the property forfeited in said cases being in the registry of this court, and subject to its order: The attorney of the United States for this district comes and moves the court to set
41 aside and vacate each and all of said judgments on the grounds following, to wit:

First. That said Titus, having been an officer of the Army of the United States at the time he obtained and gave the information on which his claim is based, is not entitled, as informer, to share the proceeds of the forfeited property.

Second. That said property at the time said Titus gave to the district attorney the information on which his claim is based, and at the time when the proceedings for forfeiture were commenced, was in the occupation of the military forces of the United States as property which had notoriously been dedicated to the so-called Confederate States, and therefore not within the scope of the acts which allow a share of the proceeds of forfeiture property to informers.

It is ordered, that the district attorney have leave to embrace in one motion all the cases therein named, and that the motion stand for argument at the next term, and that he give notice of the same to said Titus, or his att'y, within thirty days.

JOHN ERSKINE,
U. S. Judge.

MAY 2, 1870.
February term.

42 And afterwards, to wit, on the day and date last mentioned, came H. B. Titus, the said informer, by his attorneys, and on motion took an order of court as follows, to wit:

Order to pay of moiety to amount of* $10,000 *to informer on deposit of United States bonds, &c.

THE UNITED STATES
vs.
$118\frac{38}{100}$ ACRES OF LAND, AND OTHER LIKE CASES.

In the matter of the petition of H. B. Titus, informer.

It appearing to the court that there is a balance of money in the registry of the court, resulting from the sale of the property condemned by the proceedings in foregoing cases, said balan' ing the one moiety claimed by said informer, on motion it is ordered that said fund be paid to the said H. B. Titus, upon his depositing with the clerk of this court bonds of the United States to the full amount of said balance or moiety, with coupons attached, as collateral security for the return by him of said funds, when required so to do by the order of this court. And that on failure of said Titus to deposit said bonds as required by this
43 order, within thirty days from this date, the said entire fund be deposited by the clerk in the Savannah Bank and Trust Company, subject to the order of this court. The amount to be paid said Titus under this order not to exceed ten thousand dollars, and the order itself

is to nowise prejudice the claim of the United States, to the amount so paid, now pending before this court.

Both parties consenting thereto.

AMOS T. AKERMAN, *U. S. Att'y.*
JACKSON LAWTON, *for Informer.*

Be it so.

JOHN ERSKINE,
U. S. Judge.

In open court, May 2, 1870.

And afterwards, to wit, on the 15th day of December, A. D. 1870, the United States, by its attorney, John D. Pape, comes, and files its writ of error, to the fifth circuit court of the United States for the southern district of Georgia, in words as follows, to wit:

Writ of error to the circuit court.

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the judge of the district court of the United States for the southern district of Georgia, greeting:

44 Because in the record and proceedings, and also in the rendition of the judgment of a plea, which in the said court before you, between the United States and H. B. Titus, in the matter of a petition filed by said Titus, to be declared informer and entitled to the moiety of the proceeds of the property condemned to be sold in a certain information, to wit, the United States *vs.* $118\frac{38}{100}$ acres of land at Macon, G'a, a manifest hath happened, to the great damage of the United States, as by their complaint appears, we, being willing that the error, if any hath been, should be fully corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the circuit court of the United States for the southern district of Georgia, together with this writ, so that you may have the same at Savannah, in the said district, on the tenth day of April next, in the circuit court, to be then and there held, that, the record, and
54 proceedings aforesaid being inspected, the said circuit court may cause further to be done therein to correct the error what of right, according to the laws and customs of the United States should be done.

Witness, the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this fifteenth day of December, A. D. 1870.

JA'S MCPHERSON,
Clerk of the U. S. Circuit Court for the Southern District of G'a.

And on the day and year last aforesaid, the United States attorney aforesaid files a citation and service thereon in words as follows, to wit:

Citation.

UNITED STATES OF AMERICA, *ss:*

To H. B. TITUS, greeting:

You are hereby cited and admonished to be and appear at a circuit court of the United States for the southern district of Georgia, to be

held at Savannah, Georgia, on the second Monday of April, A. D. 1871, being the tenth day of said month, pursuant to a writ of error, filed in the clerk's office of the district court of the United States for said
46 district, wherein the United States are plaintiffs, and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice should not be done in the premises.

Witness the Hon. John Erskine, judge of the district court of the United States for the southern dist. of Georgia, this fifteenth day of December, A. D. 1870.

In open court.

JOHN ERSKINE,
U. S. Dist. Judge.

Service.

We, Jackson, Lawton & Bassinger, attorneys of record in this case, and attorneys for H. B. Titus, defendant in error, acknowledge due and legal service of the within citation, and waive a copy thereof this 15th day of December, A. D. 1870.

JACKSON, LAWTON & BASSINGER,

UNITED STATES OF AMERICA,
Southern District of Georgia:

I, James McPherson, clerk of the district court of the United States for the southern district of Georgia, do hereby certify that the foregoing fifty-eight pages of writing contain a full, true, and complete
47 copy of the state of the pleading and statement of facts and of the proceedings in the cause therein named as they remain of record in the records of the said district court.

In testimony whereof I have hereunto set my hand and affixed the seal of the said district court this first day of March, A. D. 1871.

[SEAL.] JA'S MCPHERSON, *Clerk.*

Assignment of error.

In error in the fifth circuit court of the United for the southern district of Georgia, April term, 1871.

THE UNITED STATES
vs.
LOT 7, BLOCK 41, &C., H. B. TITUS, INFORMER.

And now, on the second Monday of April, A. D. 1871, being the first day of said term, comes John D. Pope, attorney for the United States, and says that in the record of proceedings in said case there is manifest error.

48 1st. Because the record does not show that any person is entitled as informer in said case.

2nd. Because the name of said Titus does not appear in the information filed in said case.

3rd. Because the Secretary of War and the Attorney-General of the United States were fully informed of the existence and legal status of the property in said information described, long before said Titus pretended to have brought the same to the knowledge of the Government.

4th. Because the property against which said information was filed

was, at the time said Titus pretended to have given information concerning the same, in the possession of and occupied by the military forces of the United States, the same having been surrendered to the United States by the confederate military authorities previously in possession thereof.

5th. Because it appears from the record in said case that the title to said property was in the United States by right of conquest, long before the said Titus pretends to have informed upon the same.

Wherefore said attorney prays that the judgment of the district
49 court declaring said Titus entitled to a moiety of the proceeds of said property as informer may be reversed and held for nothing, &c.

JOHN D. POPE, *U. S. Att'y.*

And now comes the said defendant, H. B. Titus, by his attorneys, and says that there is no error in the record of proceedings in the said cause.

JACKSON, LAWTON & BASSINGER,
For Defendant.

Order reversing the judgment of the district court.

THE UNITED STATES
vs.
118 35/100 ACRES OF LAND AND H. B. TITUS, informer.

And afterwards, to wit, on the 9th day of May, A. D. 1871, this cause came on to be heard on the transcript of the record from the district court for the southern district of Georgia, and was argued by counsel; in consideration whereof it is now here adjudged and ordered by this court that the judgment of the district court adjudging said Titus to
50 be entitled as informer to one-half the proceeds of the property in the information described, be reversed. It is further ordered and adjudged that said Titus take nothing as informer in said case.

May 9, 1871. In open court.

JOSEPH P. BRADLEY,
Asso. Justice of the Sup. Ct. U. S., &c.

Writ of error.

And afterwards, on the 17th day of May, A. D. 1871, a writ of error was issued and allowed in words as follows, to wit:

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the fifth judicial circuit and southern district of Georgia:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said circuit court before you or some of you, between the United States of America, plaintiff in error, and H. B. Titus, defendant in error, a manifest error hath happened, to the great damage of the said H. B. Titus, as by his complaint appears:

51 We being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command, if judgment be therein given, that

then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that, the record of proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Hon. Salmon P. Chase, Chief Justice of the said Supreme Court, the 17th day of May, in the year eighteen hundred and seventy-one.

[SEAL.] JAMES McPHERSON,
Clerk of the Fifth Cir. Court, So' Dis't of Geo.

Allowed by—

JOS. P. BRADLEY,
Asso. Just. Sup. Ct. U.S.

52 *Bond.*

Know all men by these presents that we, Alexander N. Wilson and Charles V. Hutchins, are held and bound unto the United States of America, in the full and just sum of one thousand dollars, to be paid to the said the United States of America; to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated this seventeenth day of May, in the year of our Lord one thousand eight hundred and seventy-one.

Whereas lately, at a circuit court of the United States for the southern district of Georgia, in a suit depending in said court between the United States of America, pl'ff, and H. B. Titus, defendant, upon a writ of error from the district court, judgment was rendered against the said H. B. Titus, reversing an order or judgment of the said district court directing payment to the said H. B. Titus, as informer, of one moiety of proceeds of sale of one hundred and eighteen $\frac{38}{100}$ acres of land, under
53 decree of condemnation rendered in the said district court, in the case of The United States vs. One hundred and eighteen $\frac{38}{100}$ acres of land, and the said H. B. Titus, having obtained a writ of error, and filed a copy thereof in the clerk's office of said court, to reverse the judgment in the aforesaid suit, and a citation directed to the said the United States of America, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington the first Monday of December next: Now, the condition of the above obligation is such, that if the said H. B. Tutis shall prosecute said writ of error to effect and answer all damage and costs, if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

ALEX. N. WILSON, [SEAL.]
C. V. HUTCHINS. [SEAL.]

Signed, sealed, and delivered in presence of—
JAMES McPHERSON, *Clerk.*

Approved this bond, May 17th, 1871.

JOSEPH P. BRADLEY,
Asso. Just. Sup. Ct., U. S.

54 *Citation.*

To the United States of America, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of Georgia, wherein H. B. Titus is plaintiff and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Hon. J. P. Bradley, associate justice of the Supreme Court of the United States, this seventeenth day of May, in the year of our Lord one thousand eight hundred and seventy-one.

JOSEPH P. BRADLEY,
Asso. Just. Sup. C't U. S.

Due and legal service of the within citation acknowledged, copy, and all further service waived, May 11, 1871.

ANDREW SLOAN,
Ass't U. S. Att'y.

55 *Clerk's certificate.*

UNITED STATES OF AMERICA,
Southern District of Georgia:

I, James McPherson, clerk of the fifth circuit court of the United States for the southern district of Georgia, do hereby certify that the foregoing fifty-five pages of writing contain a full, true, and complete copy of the state of the pleading, the statement of facts, and of the proceedings in the above-named cause, as they remain of record in the records of the said circuit court.

In testimony whereof I have hereunto set my hand and affixed the seal of the said circuit court this eighth day of June, A. D. 1871.

[SEAL.] JA'S McPHERSON,
Clerk of the 5th Circuit Court for the Southern Dist. of Georgia.

6 In error in the 5th circuit court of the United States for the southern district of Georgia, April term, 1871.

THE UNITED STATES
vs.
LOT 7, BLOCK 41, &C., H. B. TITUS, INFORMER.

And now, on the second Monday in April, A. D. 1871, being the first day of said term, comes Jno. D. Pope, attorney for the United States, and says that in the record of proceedings in said case there is manifest error.

1. Because the record does not show that any person is entitled as informer in said case.

2. Because the name of said Titus does not appear in the information filed in said case.

3. Because the Secretary of War and the Attorney-General of the United States were fully informed of the existence and legal status of

the property in said information described long before said Titus pretends to have brought the same to the knowledge of the Government.

57 4. Because the property against which said information was filed was, at the time said Titus pretends to have given information concerning the same, in the possession of, and occupied by, the military forces of the United States, the same having been surrendered to the United States by the confederate military authorities previously in possession thereof.

5. Because it appears, from the record in said case, that the title to said property was in the United States, by right of conquest, long before the said Titus pretends to have informed upon the same.

Wherefore said attorney prays that the judgment of the district court, declaring said Titus entitled to a moiety of the proceeds of said property, as informer, may be reversed and held for nothing, &c.

JNO. D. POPE,
U. S. Att'y.

58 And now comes the said defendant, H. T. Titus, by his attorney, and says that there is no error in the record of proceedings in the said cause.

JACKSON, LAWTON & BARENGER,
For Defendant.

(Indorsed:) In the 5th circuit court of U. S. for the southern district of Georgia. In error. United States vs. Lot 7, Block 41, &c. H. B. Titus, informer. Assignment of error. Filed 20 January, 1872. Jno. D. Pope, U. S. att'y.

(Indorsement on cover:) No. 335. H. B. Titus, plaintiff in error, vs. The United States. S. Georgia C. C. U. S. Filed 20th January, 1872.

Supreme Court of the United States.

OCTOBER TERM, 1873.

No. 128.

H. B. TITUS, INFORMER, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES, DEFENDANT IN ERROR.

In error to the Circuit Court of the United States for the Southern District of Georgia.

JOHN A. WILLS,

Of Counsel for Plaintiff in Error and his assignees.

Judd & Detweiler, Printers.

Supreme Court of the United States.

OCTOBER TERM, 1873.

No. 128.

H. B. TITUS, INFORMER, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES, DEFENDANT IN ERROR.

In error to the Circuit Court of the United States for the Southern District of Georgia.

STATEMENT OF THE CASE.

This is a writ of error, brought by Titus, the plaintiff in error, to review the judgment of the circuit court of the United States for the southern district of Georgia. That court, on a writ of error to the district court of the United States for the same district, reversed the judgment which the said court had previously given in favor of the present plaintiff in error, as an informer, under the confiscation laws of the late rebellion.

The proceeding instituted in the district court was an information filed therein on the 15th day of January, 1867, by the United States district attorney, under the confiscation acts of August 6, 1861, and July 17, 1862, in behalf of "the United States and an informant," to confiscate a tract of land therein described, containing $118\frac{38}{100}$ acres of land lying in the county of Bibb, Georgia, near the city of Ma-

con; which had been conveyed by the executors of McDonald to the Confederate States, and which had been used by them for hostile purposes during the war of the rebellion.

See information, Printed Record, p. 1, 4.

On the same day, a warrant of seizure, based on the said information, was issued by that court, directed to the marshal of the district, commanding him "to attach the said property and to detain the same in his custody until the further order of the court respecting the same; *and to give one notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned as forfeited, and the proceeds thereof distributed according to the prayer of the said information;* and that they be and appear before the said court, &c., on the 2d Friday of February next, at 10 o'clock, &c.; and what you shall have done in the premises, do you then and there make return thereof, together with this writ."

Printed Record, p. 6.

On the 20th of January, 1867, the marshal returned that he had "seized the within described property, January 17, 1867;" and afterwards amended his return by adding "that he had given due public notice to all persons interested in the within-described property, and had the same in his custody, this 12th day of February, 1867."

Printed Record, p. 6, 7.

On the 26th of February, 1867, on motion of the United States district attorney, judgment by default was entered against all persons, and a jury also being called, found a verdict as follows: "We, the jury, each and all, find the within described property subject to forfeiture and condemnation." Whereupon, on the same day, a decree of condemnation was rendered against the said property; and an order was made by said court directing the property to be sold by the marshal to the highest bidder, &c., "and that the proceeds

of such sale be paid by him to the recorder of this court, to be disposed of according to law."

Ibid., p. 7–8.

On the 25th of March, 1867, a *venditioni exponas* was issued to sell the said property, &c., which on the 21st of November, 1867, was returned as unsold, by order of the United States district attorney, given May 8, 1867. Afterwards, on the 20th of January, 1870, the marshal returned that the property had been sold, at public auction, &c., on the 7th of December, 1869, for the suum of $19,542.75; and that he had paid that amount into the registry of the court.

Ibid., p. 8–10.

In the meantime, that is, between the decree of condemnation and order of sale, made February 26, 1867, and the marshal's return of the sale, made June 20, 1870, and before the sale, that is to say, on the 17th day of June, 1867, H. B. Titus, who claimed to be the informer—at whose instance the said proceeding for the confiscation of the said property had been instituted—appeared in court by his counsel, and filed a petition, "praying to be made a party, (in the said confiscation proceeding,) and a judgment of the court asserting his right to one half of the proceeds of said property, and directing the same to be paid to him whenever said property shall be sold, and for all proper relief."

The petitioner alleges, as the foundation of his claim, the following facts, among others:

1st. "That heretofore, to wit, on the 17th day of July, 1866, and before the proceedings herein were instituted, he (the petitioner) filed with the Hon. Henry S. Fitch, United States attorney for this district, information, under the act of August 6, 1861, against $118\frac{35}{100}$ acres of land, and the improvements thereon, in Bibb county, being the same described in the libel of information herein.

2d. "That the said United States attorney did, in pursuance of said information so filed by him, institute the proceedings herein for the condemnation of said property for the use of the petitioner, as informant, and the United States, in equal parts.

3d. "That at the last February term of this honorable court, a decree was rendered condemning said property as forfeited to the United States, and directing the same to be sold, and the proceeds paid to the clerk.

4th. "That the same has been advertised for sale, but has not been sold, the United States attorney postponing the sale of the same." Wherefore, the petitioner prays, &c., as before stated.

Printed Record, p. 10.

From some cause or other, a portion of the records of this proceeding became lost or mislaid, and various steps were taken to supply the missing papers. On the 9th of February, 1869, a certificate of the United States district attorney, dated April 8, 1868, was filed in the said court, relating to certain cases in the United States district court, of information, &c., Titus informant, in words and figures as follows, to wit:

"I, Henry S. Fitch, district attorney of the United States, for the southern district of Georgia, do hereby certify that H. B. Titus did file with me information *which led to the seizure of the property in the foregoing cases, and did furnish evidence used in the trial of said causes for the condemnation of the same.*

"HENRY S. FITCH,
"*U. S. Att'y.*

"SAVANNAH, *April* 8, 1868."

Printed Record, p. 14–15.

On the 15th day of December, 1870, further proceedings

were had in the district court to perfect the record, and on motion of Andrew Sloan, counsel for the United States, it was ordered that he now be allowed to file in this case, with a clerk of this court, copies of *the petition of H. B. Titus, the answer thereto and the demurrer, now of file in the case of the United States* vs. *Lot No. 7, Block 41, city of Macon, so that the records will be complete in said case*, and in order to enable the appellate courts to act intelligently upon the writ of error filed herein. And thereupon the said attorney for the United States, on the 15th day of December, 1870, filed the following answer of United States to H. B. Titus, informer.

Copy established by order of Court.

"The United States, by Henry S. Fitch, their attorney, came, and for answer to said petition, say:

"That said H. B. Titus ought not to be deemed informer and entitled to one-half of the proceeds of said property, because, they say, that said property was conveyed to the Confederate States for the purpose specified in said information on day of , and remained the property of said Confederate States, in their custody and control of the same, until the surrender of the armies of the said Confederate States, at which time said property was taken possession of, and from that time henceforth [thenceforth] remained in the possession, control, and custody of the military forces of the United States, and was, by said forces held and occupied, possessed and controlled *at the time said Titus gave the information as alleged in his said petition, and at the time the said was seized by the marshal under the warrant issued under said information*, and this the United States are ready to verify.

"HENRY S. FITCH,
"*U. S. Att'y.*"

Printed Record, p. 12–13.

On the eight day of April, 1868, (the same day on which

the same attorney had given the certificate of facts before stated, at p.) Titus, by his counsel, demurred to the plea of the said United States, *by them this day pleaded*, in answer to said petition of said petitioner, and for answer said, "that nothing in said plea alleged is sufficient to debar the petitioner from the relief prayed for in said petition."

The plea of the United States, it will be observed, was a *plea by way of confession and avoidance.* It does not *controvert a single fact* alleged by Titus in his petition. On the contrary, by well established principles of pleading, the United States district attorney *confessed as true every fact therein alleged*, as fully as Titus, by his demurrer, confessed the truth of every fact alleged by the plea of the United States. Confessing by his pleading the truth of the facts alleged by Titus, (as well as by his certificate, of the same date as his plea,) the United States district attorney set up as a defence *the new matter alleged in his plea.* On this new matter, *issue in law* was joined by Titus in the manner already stated.

Such being *the admissions on both sides*, and such being *the issue in law*, the record proceed to say: "That afterwards, to wit, on the day and date last aforesaid, (April 8, 1868,) the order of the court was granted in words as follows, to wit:

Order of the Court.

"Petition of H. B. Titus, informer, praying order of court for distribution, &c.

"It appearing to the court *from the pleadings*, and it being *admitted* that the libel in the above-stated case was filed upon the information filed by the said petitioner, H. B. Titus, with the district attorney of the United States for said district."

Printed Record, pp. 10, 13, 15.

"And it appearing further from the record in said cause that the seizure of said property was based upon said information." (Ib., p. 1.)

"And it further appearing that the evidence upon which the judgment of condemnation of said property was based, was furnished by said petitioner.

"After hearing argument upon demurrer to the plea of the United States pleaded against said petitioner, it is ordered, adjudged, and decreed that the prayer of said petitioner be granted, and that one-half of the net proceeds from the sale of the said property, after payment of all costs in said cause, be paid to said petitioner or to his attorneys of record.

"April 8, 1868.

"JOHN ERSKINE, *U. S. Judge.*"

It will be remembered that the marshal of the United States made his *second return* to the writ of sale, on the 20th of January, 1870, reporting that he had sold the property on the 7th of December, 1869, for the sum of $19,542.75.

Printed Record, pp. 9, 10.

As another element in this case, it appears by a part of the supplied record that on the 19th day of April, 1870, the attorney of the Commission of the Freedman's Bureau appeared in this proceeding, and filed a petition claiming on its behalf *the share or interest of the United States in the proceeds of the sale*, under the 12th section of the act of July 16, 1866.

After reciting that the land in question was held under title by deed, by the late so-called Confederate States; that it was seized by the United States marshal for Georgia, and that libel of information was filed in this court 25th January, 1867, and default and verdict of condemnation entered up on the minutes of this court, February 25, 1867; that it was sold by the marshal, &c., and that the proceeds of said sale are still in his hands, subject to the order of the court—it alleges that by the 12th section of the act of Congress of July 16, 1866, (relating the Freedman's Bureau,) "the right

and use of said property, or *the proceeds* derived therefrom, was by law vested in said Commission, and therefore moved the court to order the payment of such money derived from the sale of said land or property to him, that it may be appropriated in terms and pursuance of the provision of the act of Congress."

Printed Record, p. 15.

Afterwards, to wit, on the 19th of April, 1870, that motion, so far as relates to the property now in question, was disposed of by the following order:

In re, THE UNITED STATES *vs.* $118\frac{35}{100}$ ACRES OF LAND, 15 AND 12 ACRES, NEW LABORATORY, AT MACON.

Motion to distribute money in the Registry of the Court arising from sale of said property.

The above property having been sold by the order of the court, and the proceeds paid into the registry thereof, upon motion of O. A. Lochrane, attorney for Commissioner of Freedman's Bureau, it is ordered by the court, that the register of the court pay to the said commissioner *one half of the proceeds of said sale*, less the fees, costs, and expenses proportionately increased [incurred?] in said case.

In open court, April 19, 1870.

AMOS T. AKERMAN,
U. S. Attorney.
O. A. LOCHRANE,
Attorney for Com'r.

Be it so: JOHN ERSKINE, *U. S. D. J. for Ga.*

Printed Record, pp. 15, 16.

This fact is important, in connection with this proceeding *in rem* to confiscate the property in question. It is evidence tending to show, that the Freedman's Bureau, (which acquired its title by the 12th section of the act of July 16, 1866,) had knowledge of this proceeding, and knowingly *elected* to assert its title to this property or the proceeds, *through and in subordination to the proceeding in rem*, instituted at the instance of H. B. Titus, informer, to confiscate the same. 1st.

By its failure to appear and assert the title now alleged to the property as *conquered property*, in answer to the monition, on the second Tuesday of February, 1867; and also, by its default on the 26th February, 1867, when judgment of condemnation was entered, and the property ordered to be sold; and, 2nd, By its subsequent appearance to claim, and by its consent to accept, followed by its actual acceptance of *one half* of the proceeds of the property so condemned and sold.

On the 2d of May, 1870, Amos T. Akerman, the same United States district attorney who had signed the previous order consenting to that method of distribution, appeared and moved the court in this case, and in other cases of like character *to set aside the judgment in favor of the informer* for various reasons, of which no proof was offered, and with which we have nothing to do in this case, except so far as they are contained in the plea, and are admitted by the demurrer to the said plea of the United States.

Printed Record, p. 16, 17.

This motion appears to have been afterwards abandoned as nothing was done under it; and on the 15th of December, 1870, (printed record, p. 18,) the writ of error was sued out which carried the case into the circuit court of the United States for the southern district of Georgia. In that court, on the 9th of May, 1871, "the judgment of the district court adjudging said Titus to be entitled, as informer, to one-half the proceeds of the property in the information described, was ordered to be reversed; and it was further ordered and adjudged that the said Titus takes nothing as informer in said case."

Printed Record, p. 20.

To review that judgment of reversal, the present writ of error to this court was sued out by the plaintiff in error, and it is now presented in his name, for his benefit, and for that of certain assignees, for whom I appear, and to whom it had

been assigned by the said Titus for full value before the reversal of the said judgment or notice of appeal therefrom. This last fact does not appear by the record; but I mention it to apprise the court how the case stands, and the interest for which I appear. Under these circumstances, the legal questions involved, are questions in which the plaintiff in error is only indirectly interested. Still it must be admitted that the parties in interest, as innocent third parties, and assignees for full value, must recover on his claim of title, or not at all.

ASSIGNMENT OF ERROR.

The circuit court erred in reversing the judgment of the district court in favor of the plaintiff in error.

We maintain that the said judgment was a good and valid judgment, under the pleadings, admission, and law of the case, for the following reasons:

1st. Because the proceedings in confiscation, in which the said judgment was rendered, were a legal unit; and, therefore, *the said judgment in favor of the informer*, under the pleadings, admissions, and law of the case, was an integral, necessary and logical sequence or part of the said confiscation proceedings.

2d. Because, admitting for the purpose of the argument, that the United States had two grounds of claim or title to the confiscated property in question: 1st, that arising under the confiscation acts of August 6th, 1861, and July 17th, 1862, represented by the Attorney General of the United States, and the district attorney for the southern district of Georgia; and 2d, that, arising by conquest, or by the surrender of the Confederate States on the field of battle, represented by the Commissioner of the Freedman's Bureau, under the 12th section of the act of July 16, 1866, still the United States had a right to elect, and by the concurrent action of these several officers did elect to rely upon

and assert its title to the said property, and to enforce and dispose of its title thereto by the proceedings in confiscation instituted at the instance of the informer, the plaintiff in error in this case, and the United States are bound by all the legal consequences and incidents of that election.

3d. Because, in this view, there is no legal incompatibility, such as is assumed, and as is asserted in and by the plea of the United States, between the facts therein asserted and the rights of the informer, as decreed to him by the judgment of the district court, upon which legal issue alone, the correctness or incorrectness of the judgment must be determined.

ARGUMENT FOR PLAINTIFF IN ERROR.

The circuit court, so far as the record shows, reversed the judgment of the district court rendered in favor of the informer in this case, without delivering any opinion, or assigning any specific reasons for its judgment. It will be most covenient to insist upon the error committed by the circuit court, by maintaining affirmatively the correctness of the judgment of the district court. The same argument may be made in this court, for the plaintiff in error, which it would have been proper to make for him, as defendant in error, in the circuit court.

It will not be denied, that the circuit court could decide the case only upon the record and the judgment of the district court, as they came before it. This court also, must decide this case upon the same record.

FIRST ERROR.

We contend that the circuit court of the United States erred; first, because the proceeding in confiscation, in which the said judgment in favor of the informer was rendered by the district court, was *a valid legal unit;* and that, there-

fore, the said judgment in favor of the informer, under the pleadings, admissions, and law of the case, was an integral, necessary and logical sequence, or part, of the said confiscation proceedings, which considered as such, cannot be maintained in part, and set aside in part; in short, that the whole must stand or fall together.

Upon the record of the district court, we insist here, that there are certain subordinate propositions of law and fact, which are too clear to be disputed, and which ought, we think, to be admitted without argument:

1st. The first is, that the land which was confiscated by the judgment of the district court, *was confiscable* under the confiscation acts of the United States, of August 6, 1861, and July 17, 1862.

The fact, that the land had been conveyed by its former owners, *directly*, "to the Confederate States," and had been used and employed by them in aid of the rebellion, did not render it, *any the less, nor any the more, confiscable*, under those laws, than it would have been, if the title had remained in its former owners: because, in either case, it would have been equally "used and employed in aiding, abetting, and promoting" the rebellion, and was, therefore, confiscable under that law and for that reason. The *title* of those who now hold the land under the decree and order of sale in the proceedings in confiscation against it, rests upon the truth of this proposition; and, indeed, it seems to be admitted, on all sides, because no writ of error has been sued out by any one, to call in question the validity of those proceedings, so far as they relate to the judgment of condemnation, and to the sale of the land confiscated.

2d. The second proposition is, that by the third section of the act of August 6, 1861, it was made "the *duty* of the Attorney General, or of the district attorney of the United States for the district in which said land was situated, to institute

the proceedings of condemnation, and *in such case* it is declared they shall be *wholly* for the benefit of the United States, or *any person may file an information with such attorney, in which case* the proceedings shall be for *the use of such informer and the United States in equal parts.*"

12 Stat. at Large, p. 319.

The information filed by the informer with the district attorney which led to the seizure of the property in this case, was filed July 17, 1866. (Printed Record, p. 10.) He also furnished *the evidence* used in the trial of this case for the condemnation thereof. (Ib., p. 15.) Now, if the district attorney had had all the information and evidence necessary to secure a condemnation of the said property, before or at the time the information of the informer was filed with him, it was *his duty by law to proceed on his own information and evidence.* But he did *not* so proceed. Why? Evidently, because he *could not.* His office was in Savannah, and the property in question was situated in or near Macon, a distant part of the State. Even after the information and evidence of the informer were thus furnished to him, the United States district attorney did not actually file his information in the United States district court until January 15, 1867, that is, until nearly six months afterwards. The certified copy of the deed to the Confederate States, which was filed with his official information, is dated July 23, 1866. (Printed Record, p. 5.) The information itself alleges that it had not been recorded until the 23d day of July, , probably the very day of the date of the certificate, so that a copy of the deed could not be had, until *after* the information made by the informer. The district attorney, therefore, had from the 16th of July, 1866, until the 15th of January, 1867, to determine whether he needed the services of the informer to aid him in the prosecution of the confiscation proceeding. In the meantime, he knew all the facts subsequently pleaded by him in answer to the petition of the in-

former, nevertheless, at the end of that time; under his oath of office, and with all that knowledge, he solemnly and officially filed the information in this case, in which the surrender of General Johnson is alleged, (section 7, p. 4,) and in the very head and front of it he declared that *he prosecuted it for the benefit of the United States and of an informer*. He then and there took a position, from which, as we contend, he could not afterwards recede, so long as he *continued* to prosecute the proceeding in confiscation as the representative of the Government, and to exact the fruits of the confiscation as such, thus solemnly acknowledged by him to be for the joint benefit of the United States and of an informer.

Besides, we must not allow ourselves to be misled by the use of an *ambiguous word*. It must not be forgotten that, technically, an "*informer*" is not one who gives the *first information or knowledge* of the violation of a law, to which a penalty of forfeiture is attached, and for which a portion of it is offered as a reward to such informer, but he is *one who takes the responsibility of causing the violated law to be enforced*, for which service, mainly, if not entirely, his share of the penalty or forfeiture is given. In this aspect, the service rendered by the informer in this case is indisputable. He caused the law to be enforced.

If there was any evidence to show that the United States district attorney *fraudulently or collusively combined with the informer* to file the information at his instance, in order to share with the informer in his part of the proceeds at a time when that officer had all the information and evidence necessary to secure a condemnation *wholly* for the benefit of the United States, the case would be entirely different. But of this there is not only no evidence, but not even a suggestion in the record.

3d. The third proposition is, that the plaintiff in error was *the informer* at whose instance the law was enforced, and for

whose benefit, equally with the United States, the said confiscation proceedings were *instituted.*

About this fact there can be no question. 1st, Because in the very beginning of the information filed by the United States district attorney, he alleges that "he prosecutes for the United States *and an informant,*" (printed Record, p. 1;) 2d, because this informer, in his petition to the district court, directly asserts this fact, (printed Record, p. 10,) and 3d, because the United States district attorney, both in his answer thereto and by a contemporaneous certificate filed in the case, both expressly and by implication admits the same fact.

Ibid, pp. 13, 15.

The only objection in point of form which could possibly be made in this respect is that the informer is *not expressly named* in the information; but this objection, which was urged in the circuit court, has no validity, as has been expressly decided by this court, in the Confiscation Cases, (7 Wallace U. S. R., p. 462.)

Mr. Justice Clifford, in delivering the opinion of this court in answer to such an objection, says:

"Mention of the *name* of the informer in the information in such cases *is not necessary,* as he is not a party to the suit, nor is he entitled to be heard *as such* in any stage of the proceedings. He cannot institute the suit, nor move for process, nor join in the pleadings, nor take testimony, nor except to the ruling of the court, nor sue out a writ of error, or take an appeal. Judgment is for the claimants or for the United States, and if for the latter, and the claimants do not remove the cause into this court for revision, *it then becomes the duty of the court to render the decree for distribution.*

"*Prior to such a decree,* the *interest of the informer is conditional,* and under the decisions of this court it continues to be so until the money is paid over, as required by law."

The position here indicated was that followed in this case, and after the failure in this case by every one to object to

the decree of condemnation, in the language of this court, "it then became the duty of the court to render the decree for distribution." But it cannot be doubted that, after the decree in favor of the informer, and the writ of error sued out by the United States to reverse that decree, and the reversal of that decree, the informer, of course, became entitled to sue out the present writ of error, a right which, however, according to the last authority, he did not possess *prior to the decree in his favor*. (See *McVeigh* vs. *The U. S.*, 11 *Wall., p.* 267; *Miller* vs. *U. S.*, 11 *Ib., p.* 293, 303, 304; Confiscation Cases, 7 Ibid., p. 462; 6 Ibid., 759, 766.)

4th. The fourth proposition is, that when these two general facts are established in this case, first, that the land informed against was *confiscable*, and was actually *confiscated and sold* under a judgment of the district court, and, second, that the said proceedings in confiscation were instituted in the beginning and carried on to enforce the law, at the instance of the plaintiff in error, an informer, whose relation as such has been admitted and proved—the courts of the United States in such confiscation proceedings have no right to disregard the third section of the act of August 6, 1861, which delcares expressly that "*in such case, the proceedings shall be for the use of such informer* and *the United States in equal parts.*"

12 Stat. at Large, 319.

To hold otherwise would be in effect to invest them with a *dispensing power over the execution of the laws*, a function which is foreign to their duties, and one which, by law, is vested in other branches of the Government. The simple duty of the courts as such is to enforce the laws as they find them, especially when clearly and unequivocally expressed.

By the Constitution it is made the duty of the President (who is also, at the same time, invested with the pardoning power) to see that the laws are faithfully executed.

By the first section of the act of August 6, 1861, it is also provided that it shall be the duty of the President of the United States to cause the same [that is, the confiscable property] to be seized, confiscated, and condemned.

He has not intervened in this case, except indirectly, and then only to cause the land in this case "to be seized, confiscated, and condemned."

This view is sustained by authority. This court itself, in expounding the law of the subject, with special reference to the 3d section of the act of August 6, 1861, has determined, in the very able opinion delivered by Mr. Justice Clifford in the *Confiscation Cases*, (7 Wallace, 454, &c.,) that this dispensing power is lodged (subject, of course, to the superior power of the President) only in the Attorney General of the United States, in cases before this court; that an informer, as such, under this law, has no vested interest in fruits of confiscation proceedings, contrary to the interests of the public; and hence that the Attorney General may properly, and against the interest and objection of the informer, *ask a dismissal of an appeal* to this court, in cases where, the decree below having been *against it*, the Government has appealed; and in the same way ask, upon agreement to that effect with the counsel of the claimants *for a reversal of a decree*, when on *decree against them*, the appeal has been on the other side, and for a remand of the cause to the court below, with directions to dismiss the libel; and also that the like power is vested in the district attorneys of the United States, in their respective districts, in proceedings before the district and circuit courts of the United States.

Ibid., p. 458.

But even this dispensing power, thus vested in these law officers in such cases, is limited to the control and disposal of the *whole proceeding*—not to a maintenance of a *part*, and to a reversal of a part of the proceedings, but to a maintenance or reversal of the whole proceedings.

Now, it is obvious that if they could bind the United States in favor of the claimants, by a dismissal of the *whole* proceedings, they could certainly bind them *in favor of an informer*, to the extent of *one-half* the proceeds, by persisting in the proceedings instituted at his instance and for his benefit.

The decision of this court in *Dorsheimer* vs. *United States*, (7 Wallace, U. S. R., p. 166, &c.,) is not in conflict with this view. In that case, the Secretary of the Treasury, in the exercise of a *discretionary pardoning* power, agreed to accept $25,000 in lieu of a larger sum, one-half of which larger sum Dorsheimer and his associates claimed as informers. "The Secretary refused to pay them the half of the larger sum, but was willing to pay them half of the $25,000, *the last sum being, as he considered, all that was received in lieu of penalties and forfeiture.*"

Ibid., p. 169.

In the opinion of the court, delivered by Mr. Justice Grier, the decision of this court in the United States *vs.* Morris, (10 Wheaton R., 287,) is quoted with approbation, in which case it is said: "Their interest" (that of the custom-house officers in penalties for violations of the revenue laws) "is still *conditional*, and the *condemnation* only ascertains and determines *the fact on which the right is consummated, should no remission take place.*" The right does not become *fixed* until the receipt of the money by the collector. * * * It was the first duty of the collector to collect the amount of duties or taxes on the property seized. The Secretary had no right to mitigate, remit, or compromise that amount. Persons who had advanced money on the property in good faith, offer the *whole amount of the tax due*, and finally agreed to pay the sum of $25,000 *to have the penalties remitted.* The offer was accepted, and *the further prosecution of the suits was completely ended.*

The power intrusted by law to the Secretary was *not a*

judicial one, but one of *mercy* to mitigate the severity of the law. * * * It was the exercise of *his discretion* in a matter intrusted to him alone, and from which there could be no appeal. (7 Wallace, p. 174–175.)

The right of the informer is declared to be *perfect* in case *no remission takes place.* When the fruits of the proceeding are actually received, and in case of a remission of part of the penalty, he is entitled to *his share of the part actually received as penalty.*

Now, in the case before the court, the whole fruits of this proceeding in confiscation have been received. There has been no remission of any part of the penalty or forfeitures incurred, either by the action of the President, or of the district attorney of the United States. The whole proceeds have been received, and now the only question is as to the right of the informer to his share of the proceeds received, under the condemnation and sale of the property upon proceedings both admitted and proved to have been instituted at his instance and partly for his benefit.

Under the doctrine and authority of these cases in connection with the express declaration of the confiscation act of August 6, 1861, it is evident, therefore, that no dispensing power in confiscation proceedings under it is vested in the United States; that the only power on that subject under the *law* is vested in the President or in the law officers of the Government, neither of whom has exercised it in this case; and, further, that if exercised at all by them, it must be exercised to the extent of remitting or enforcing the *whole forfeiture* in each proceeding in confiscation; and that if the law is enforced the right of the informer becomes perfect, and the proceeds received from the condemnation and sale must be received, where the proceeding has been confessedly instituted at the instance of an informer, as in this case, "for the use of such informer and the United States in equal parts;" and that the courts of the United

States were and are bound to render judgment accordingly.

Now, if these several propositions of law and fact are true, then the general proposition follows—that the confiscation proceedings in the district court in this case were a legal unit; that the whole must stand or fall together; and that as the confiscation proceeding, as such, is treated as valid and is allowed to stand, therefore the decree in favor of the informer (whose information was the basis of the whole proceeding) must be allowed to stand also, because it is a necessary logical consequence of the whole proceeding.

SECOND ERROR.

The circuit court erred—

2d. Because (admitting for the purpose of the argument) that the United States had two grounds of claim or title to the confiscated property in question, 1st: That arising under the confiscation act of August 6, 1861, and July 17, 1862, represented by the Attorney General of the United States and the district attorney for the southern district of Georgia; and 2d, That arising by conquest or by the surrender of the Confederate States on the field of battle, represented by the Commissioner of the Freedman's Bureau, under the 12th section of the act of July 16, 1866, still, *the United States had a right to elect*, and by the concurrent action of those several officers *did elect*, to rely upon and assert its title to the said property, and *to enforce and dispose of its title thereto, by the proceedings in confiscation instituted at the instance of the informer*, the plaintiff in error in this case, and, consequently, the United States are bound by all the legal consequences and incidents of that election.

The first fact showing that election is furnished by the proceeding to confiscate the property, and its subsequent confiscation under it, as heretofore stated.

The second fact showing that election is furnished by the

concurrent action of the Commissioner of the Freedman's Bureau, as stated at page 7 in the statement of the case.

The fourth section of the act establishing the Freedman's Bureau, passed March 3, 1865, (13 Stat. at Large, p. 507,) provides "that the Commissioner, under the direction of the President, shall have authority to set apart for the use of loyal refugees and freedmen such tracts of land within the insurrectionary States as shall have been *abandoned or to which the United States shall have acquired title by confiscation or sale or otherwise*, and to every male citizen, whether refugee or freedman as aforesaid, there shall be assigned not more than forty acres of such land," &c. After providing that he shall be protected in the occupancy thereof, at an annual rental for the period of three years, it concludes thus: "at the end of said term or at any time during said term, *the occupants* of any parcels so assigned *may purchase the land and receive such title thereto as the United States can convey*, upon paying therefor the value of the land, as ascertained and fixed for determining the annual rent aforesaid."

Thus it appears that the only title proposed to be given for any such property by the United States *was a quit-claim title.* This fact, therefore, created a practical necessity for perfecting the title to such property by proceedings in confiscation, in order to enhance the price of the property in the market up to its real value.

The 12th section of the act of July 16, 1866, (14 Stat. at Large, p. 173, &c.,) *continuing* the said Bureau, also provides "That the Commissioner shall have power *to seize, hold, use, lease or sell all buildings and tenements, and any lands appertaining to the same, or otherwise, formerly held under color of title by the late so-called Confederate States, and not heretofore disposed of by the United States*, and any buildings or lands held in trust for the same by any person or persons, and to use the same, *or appropriate the proceeds derived therefrom, to the education of the freed people*," *&c.*

The 15th section of the same act provides that "all acts

or parts of acts *inconsistent* with the provisions of this act are hereby repealed."

The 2d section of the act *discontinuing* said Bureau, passed July 25, 1868, (15 Stat. at Large, p. 193,) provides "That the Commissioner of the Bureau shall, on the first day of January next, [January 1, 1869,] cause the said Bureau to be withdrawn from the several States within which said Bureau has acted, *and its operations shall be discontinued.* But the *educational department of the said Bureau*, and the collection and payment of moneys due the soldiers, sailors, and marines, or their heirs, *shall be continued as now provided by law*, until otherwise ordered by act of Congress."

This is all the legislation relating to the Freedmen's Bureau to which it is necessary to refer in this connection. From this it is apparent that the whole beneficial title of the United States in the property in question, whether acquired by conquest or by proceedings in confiscation, was vested by law in the Commissioner of the Freedman's Bureau for the uses of that institution.

Therefore, at any time before the information was filed, and at all times afterwards and before the sale of this property, it was in the power of the Commissioner to have elected to claim title by conquest alone, and through the law officers of the United States to have discontinued the confiscation proceedings, and to have relied on the title by conquest alone. But, as we have already seen, that was not done. In addition to his passive acquiescence, he came forward, as we have also seen, and by his application to the court for *his half* of the proceeds of the sale of the property, he directly and positively ratified and approved the confiscation proceedings, and the claim of the informer to the other half of the proceeds under them.

But why should he do so? The case of the United States et al. *vs.* Huckabee et al. (16 Wall. U. S. R., p. 414, &c.,) furnishes a satisfactory answer.

In that case, it appears, that the "Bibb County Iron

Works" had been captured by the army of the United States during the war; that they had been surrendered to the Freedman's Bureau and sold and conveyed by its authority to the parties named; that the purchasers not satisfied with the title thus acquired, applied to Congress and obtained the passage of a private act, passed December 15, 1866, (14 Stat. at Large, p. 616,) by which it was enacted "*that any interest which the United States have* in the land described in a deed executed by Wager Swayne, assistant commissioner of the Bureau of Freedmen and Abandoned Lands in the State of Alabama, to Francis S. Lyon, bearing date February 3, 1866, *be and the same is hereby released and confirmed to the said Lyon*;" and further, that still not satisfied with both these titles, the United States district attorney instituted proceedings in confiscation, at the instance of the said purchasers, in order to have the same condemned in their interest and as a means of perfecting their title to the said property.

This court in that case decreed that the name and process of the United States could not be used for any such purpose. Nevertheless, the facts of that case show how the title by conquest was regarded in the Southern States, and how unwilling parties, claiming under it, were to rely upon it. The price for which the said property was sold by the Freedman's Bureau, also shows in what estimation such a title was held. That property had originally been sold to the Confederate States for the sum of $600,000. The same property, under the title acquired by conquest was sold by the Freedman's Bureau for the sum of $45,000. Now contrast those prices with the prices for which the property in question in this case was sold. The original owners sold it to the Confederacy for the sum of $8,066.66 as appears by their deed of conveyance. (Printed Record, p. 5.) The same property was sold by the marshal under the proceedings in confiscation for the sum of $19,542.75, as appears by his return, (*Ib.*, p. 10.)

These facts show that in the insurrectionary States, but little value was attached, in point of fact, to property held by the title of conquest, while the fullest confidence was given to a title acquired by judicial proceeding under the confiscation laws; and that, therefore, the Commissioner of the Freedman's Bureau acted wisely in this case by electing to assert the title of the United States in and by the proceed ings in confiscation.

What, then, was the legal effect of that election?

This question was submitted to Attorney General Stanbery in regard to the Macon armory property. He was asked "if, in his opinion, a complete title to that property was *not* already vested in the United States, to direct such proceedings to be instituted, as may be necessary for the purpose of having the title perfected."

Under date of October 5, 1866, (after the information in this case had been filed,) he says:

"*The United States is in possession of the property, I understand*, and insofar as the operation of *the law of war* may be concerned, the title is as perfect now as it can become.

"The property, however, may be liable to confiscation under the act of August 6, 1861, &c. In respect to the institution of proceedings under that statute, the first objection that occurs to me is, *that it waives the claim of title by conquest.* Furthermore, on the filing of the information, *the property would pass at once into judicial custody*, and continue in such custody until the determination of the cause, &c. *I do not think that I can safely direct judicial proceedings against the property*, &c. I mention that law, [of August 6, 1861,] as it is the only one known to me under which an allegation of forfeiture could probably be framed."

12 Opinions of Att'y Gen., p. 76–78.

The course which that distinguished lawyer declined to adopt in regard to the Macon armory, was adopted by the United States district attorney in the case of the Macon laboratory, and, as we contend, with the very effect which he foresaw and pointed out. And yet both officers acted wisely.

The armory property the United States would probably need for military purposes; they could therefore continue to hold it by conquest. But the laboratory they did not need for such purposes. It was, therefore, wiser to proceed to sell it by proceedings in confiscation, which would give a good title.

In the printed brief which was submitted by the counsel for the informer, before the district court, in this class of cases, this statement is made: "The Attorney General of the United States, in a controversy touching certain real estate near the city of Augusta, which the Secretary of War contended should be held as belonging to the United States, *without any judicial proceeding*, decided that capture and military occupation could not give the United States title to the property, *but that the question must be submitted to the courts, as required by the act of August* 6, 1861. If, therefore, the military possession, however long continued, does not dispense with judicial proceedings and proof, on what ground can rewards secured by law to the person instituting and prosecuting the proceedings, be denied?"

This must have been a different Attorney General, and I have not been able to find his opinion among the printed opinions of that office. It only goes to show a difference of opinion on one branch of this question, but it does not conflict with the opinion of Attorney General Stanbery, on which we rely, viz: that a proceeding under the act of August 6, 1861, waives the title by mere conquest and military possession, and must be accompanied by all the incidents of that proceeding, in regard to the rights acquired by informers under it, as well as in other respects.

THIRD ERROR.

The circuit court erred in setting aside the judgment of the district court in favor of the informer: 3d, Because in this view there is no legal incompatibility, such as is as-

sumed, and as is asserted in and by the plea of the United States, between the facts therein asserted and the rights of the informer, as decreed to him by the judgment of the district court, upon which legal issue alone the correctness or incorrectness of that judgment must be determined.

The first section of the act of August 6, 1861, (12 Stat. at Large, p. 319,) provides that all property given or used in aid of the rebellion is "hereby declared to be *lawful subject of prize and capture, wherever found;* and *it shall* be *the duty of the President* of the United States *to cause the same to be seized, confiscated, and condemned.*"

This act, therefore, contemplates *seizure by the army, if necessary,* as *the condition precedent* to proceedings to confiscate and condemn it. The President is both a *military* and a *civil* officer. The fact that he has acted as a *military* officer in capturing the property is not inconsistent with his duty afterward as a *civil* officer, to institute judicial proceedings to condemn and confiscate it under the law.

There is, therefore, no inconsistency between these two things; and yet this supposed incompatibility is made the ground for reversing the judgment of the district court in favor of the informer.

On the contrary, the analogies of the law sustain the judgment of the district court.

All maritime captures and forfeitures under the revenue laws, contemplate antecedent capture and seizure, before the title to be acquired by the conquest and by the forfeiture, can be legally perfected. And, as we all know, the subsequent judicial proceedings *in rem,* to ascertain and establish the facts of each case, are not held to be inconsistent with the rights of captors or informers. The fact that proceedings in confiscation were required to be conducted by analogy to such proceedings in admiralty, is the strongest evidence to show that the legislators who framed that law did not regard military capture and possession as being inconsistent with the rights of an informer, when the title to the

property by capture was judicially asserted by proceedings in confiscation, under the law.

In fact, the legislation of Congress throughout shows an intention to extend the humane and highly beneficial principle of consummating all change of title to property to be acquired by an exercise of the war power, by judicial proceedings, so far as they might be applicable. A general summary of this legislation is given by Ch. J. Chase in the Klein case, (13 Wallace, U. S. R., p. 136,) to which the court is referred.

If these views are correct, then there was no legal ground for reversing the judgment of the district court, and the judgment of the circuit court must now be reversed by this court.

JOHN A. WILLS,

Of Counsel for Plaintiff in Error and his Assignees.

APRIL 16, 1874.

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In the Supreme Court of the United States.

OCTOBER TERM, 1873.

H. B. TITUS, *Plaintiff in Error*,
vs.
THE UNITED STATES. } No. 128.

In Error to the Circuit Court of the United States for the Southern District of Georgia.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1873.

H. B. TITUS, *Plaintiff in Error*,
vs.
THE UNITED STATES. } No. 128.

In Error to the Circuit Court of the United States for the Southern District of Georgia.

BRIEF FOR THE UNITED STATES.

In this case, the plaintiff in error seeks to reverse the judgment below because it excludes him from sharing in certain proceeds of lands that, upon Information, &c., have been condemned and forfeited under the act of August 6, 1861.

The Information, which was filed in the district court on the 15th of January, 1867, purports to be prosecuted by the district attorney of the United States "for the United States and an informant." (Rec., p. 1.) The land was condemned on the 26th of February, 1867, (ibid., p. 7;) ordered to be sold on the 25th of March, 1867, (ibid., p. 9;) and sold on the 7th of December, 1869.

Mr. Titus's name does not appear in the proceedings at all until after the order of sale was made, he having, on the 17th of June, 1867, filed a petition alleging that, upon the 17th of July, 1866, he had filed with the dis-

trict attorney information against the land mentioned in the proceedings, and praying to be made a party, and for a share in the proceeds, &c. (Ibid., p. 10.)

The answer of the district attorney to this petition denies the claim of Titus, upon the ground that the land in question had been conveyed to the Confederate States, and belonged to them until taken possession of by the military forces of the United States, and that it had remained in the possession, custody, and control of the latter until the time that Titus had given information as alleged in the petition, and it was seized by the marshal, under the warrant in the case, &c.

To this Titus filed a general demurrer, (ibid., p. 13;) and at the same time the district attorney gave a *certificate* that Titus had filed the information that led to the seizure and "did furnish evidence that was used on the trial of the cause."

Upon the same day, (April 8, 1868,) the court gave a decree in accordance with the prayer of the petitioner. (Ibid., p. 14.)

Upon the 2d of May, 1870, a motion was made by the district attorney to vacate the above decree on grounds therein set forth; but it does not appear that anything was done afterwards in regard to such motion.

On the 15th of December, 1870, a writ of error was sued out on behalf of the United States, to remove the record to the circuit court, and thereupon, on the 9th of May, 1871, the judgment below was reversed and judgment given that Titus take nothing, &c.

The question before the court is that presented by the above *petition* of Titus, *answer* of the district attorney, and *demurrer* to the latter.

Upon the state of facts, which is the legal result of those pleadings, Titus asks to be made a party to the Information and for a share in the proceeds:—

He admits that he is not now a party to the proceedings, and asks for an amendment making him such, upon the ground that he filed information upon which were founded the proceedings for condemnation of certain lands that had been conveyed to the Confederate States, and had remained their property and in their custody and control until the surrender of their army, when it was taken possession of and remained in the possession, custody, and control of the military forces of the United States, and was so held when Titus furnished such information, and also when seized by the marshal.

The statutory provision upon which Titus relies is that of August 6, 1861, section 3, (12 Stat., 319:)

"That the Attorney General or any district attorney of the United States, in which said property may at the time be, may institute the proceedings of condemnation; and in such case they shall be wholly for the benefit of the United States; or any person may file an information with such attorney, in which case the proceedings shall be for the use of such informer and the United States in equal parts."

1. There appears to be some discrepancy between the language used by this court in reference to the above statute in the Confiscation Cases, (as cited in the

brief of the learned counsel for the plaintiff, p. 15,) and that previously made use of in the case of Francis *vs.* The United States, 5 Wall., p. 338, where the court said:

"An unofficial informer is liable for costs and damages in case of judgment in favor of the claimants. The informer should come forward and have the information made in his own name. He cannot thus intrude himself on the record after the case is prepared and about to be tried by a jury, and when a condemnation is imminent, and when he has avoided responsibility for costs in thus keeping back. If the claimants had succeeded they could have no judgment against the United States for costs, nor against him as not being a party to the suit." * * * *

"The act for regulating process in the courts of the United States, passed May 8, 1792, sections 5 and 6, provides for the taxation and payment of costs by informers.

"So the act of 28th of February, 1799, section 8, providing for compensation of marshals, &c., provides for cases of informers on penal statutes, as to payment of fees and costs.

"All the laws on the subject are based upon the supposition that the informer should be a party to the original proceeding."

It may not be necessary in the present case to decide whether an informer under the act of August, 1861, should technically be a *party* to the proceedings, or even whether his *name should appear* in the Information. It is sufficient to consider whether Titus has done here that which *at all events* the statute requires.

There seems to be no suggestion anywhere that Titus "*filed an information*" with the district attorney, as required by the statute. He did file information—that is, probably, from what he says in his petition

and the district attorney certifies, he informed the district attorney of the existence of the conveyance to the Confederate States, and afterwards produced a registered copy of the same to be used as *evidence* on the trial. [We submit in this connection that what the district attorney *certifies* is no part of the *record*, even were *evidence* admissible in any case upon the *issue of law* raised here by the demurrer.] Whether he is required to be a *party*, or to place *his name upon the information*, is not material, so long as he did not, as required by the statute, "*file an information*"—that is, as we understand it, file a formal paper containing a detailed statement of the case upon which the United States claims a forfeiture—a formal paper which "institutes the proceedings" and renders the informer filing it liable for costs and damages.

There is an essential difference between an "*informer*" and an "*informant.*" Titus, very probably, was the latter, whilst he did not sustain the part of the former, as defined by the words of the statute. We admit (for the argument) that if he had sustained that part, the mistake of calling him an *informant* would have been immaterial. But this is a case in which the *probata* strictly conform to the *allegata*, and show the existence of a misapprehension on the part of the plaintiff in error as to what is required by the act to entitle him to a share of the proceeds. He is *alleged* to be an *informant*, and he *proves* that he was an *informant.* This is a misapprehension not shared in by his learned counsel *here*, as is shown by his brief, p. 14. The latter endeavors to deduce from the record that his client does sustain the technical character of an *informer* within

the particular definition of the statute. We submit that such endeavors cannot succeed in the face of what his client alleges in his petition, to wit, that all that he did as informer was done upon the "17th day of July, 1866," at which time, as is admitted, "an information" was not filed. Nor will his case be helped materially if the court take cognizance of the district attorney's *certificate*, to wit, that he "did furnish evidence used in the trial," for this is consistent with the suggestion that what he did was to furnish for use the registered copy of the deed to the Confederate States.

All of this falls short of what the statute requires.

Indeed, the petition of Titus, whether or not he were well advised in asking to be made a *party*, goes upon the idea that up to that time he was not in a situation to ask for a share in the proceeds; and the district attorney (whatever he may have meant in speaking of an *informant* in his Information, and virtually in his *certificate*) agrees with him in that position.

Divesting the case, however, of all technicalities, and supposing Titus to stand here upon the footing incident, in another tribunal, to the prayer for "such other and further relief," &c., as the whole "record" will justify, we submit that the court cannot see its way to a judgment entitling him to a share as informer under the definition of the statute. The case is one for applying the maxim—*Quod sub certâ formâ concessum vel reservatum est, non trahitur ad valorem vel compensationem;*—Titus must enter through the door opened by the statute, or not at all.

2. We also submit that Titus cannot sustain a writ of error in this case.

The cases cited above as disagreeing in some things said by the court *arguendo*, *agree* upon this point: that in 5th Wallace, on the ground that Titus *did not* make himself a *party;* that in 11th Wallace, on the ground that, as informer, he *could not.*

The cases of McVeigh and Miller, cited by the learned counsel to the contrary, (p. 16,) stand upon their own very special reasons, as appears by the *Opinion* in the former case, and notably by the argument submitted therein by the eminent counsel for the plaintiff, in which is clearly drawn a distinction between that class of cases and the class which includes the present. (See 11 Wall., p. 265, last paragraph.)

3. Leaving out of view the statements transmitted from below as to Titus's character as an *army officer*, &c., which may be no part of the record, it is admitted by the demurrer that this land was, at the time of the information given by Titus, and also when taken by the marshal under process in this case, already in the hands of the United States represented by its army—having been taken by the latter out of the custody and control of the public authorities of the Confederate States.

In reply to what is suggested on behalf of the plaintiff in error as to the *election* made by the United States to avail itself of one title rather than another; and consequently of its being *bound* now, in favor of the plaintiff, to hold under the judicial proceedings, and not by the hand of the army, we submit that a per-

son claiming as does the plaintiff, can avail himself of no *estoppel* here, either *of record* (for the plaintiff is no party to it) or *in pais*, (as he is a mere volunteer, and that, without having incurred any risk of harm.) For suppose that the case were one of "an information" regularly filed, and successfully prosecuted in respect to property which turned out before distribution to have been the property of the United States, the exigencies of his case require the learned counsel to sustain a principle to the effect that even then there would be a case of election and estoppel. This is in the teeth of the doctrine that the United States is not bound by the *laches* of its officials. In particular, its relation towards informers is such, that their claims have no *technical value* at any time. If the property were really not first acquired by the United States under the proceedings set on foot and carried out by the informer, there is no reason for not treating his claims up to the latest moment before distribution according to that which is the very right of the matter.

4. If there be a record here to which Titus is a party, we submit that it contains no more, as regards the history of the Information, than is contained in the petition, answer, and demurrer; in particular, that the proceedings in the original Information cannot, in the state of the case here made, be referred to for any purpose allowable under a writ of error.

G. H. WILLIAMS,
Attorney General.

S. F. PHILLIPS,
Solicitor General.